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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,525	01/14/2004	Donald W. Gordon	035-1-008	5578
27469	7590	09/27/2007	EXAMINER	
MALLINCKRODT & MALLINCKRODT			DONNELLY, JEROME W	
P.O. BOX 1219			ART UNIT	PAPER NUMBER
SANDY, UT 84091-1219			3764	
MAIL DATE		DELIVERY MODE		
09/27/2007		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.	Applicant(s)	
10/758,525	GORDON, DONALD W.	
Examiner	Art Unit	
Jerome W. Donnelly	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) \_\_\_\_\_ is/are pending in the application. *1-31*  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed. *6, 9, 10-12, 15 and 21-23*
- 6) Claim(s) \_\_\_\_\_ is/are rejected. *1-4, 6, 7, 8, 13, 14, 16, 17, 19 and 24-26*
- 7) Claim(s) \_\_\_\_\_ is/are objected to. *18, 20 and 27-31*
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.



JEROME DONNELLY  
PRIMARY EXAMINER

### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____.

Claims 18, 20 and 27-31 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 5, 9, 10-12, 15 and 21-23 are allowed.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 6, 7, 16, 17, 19 and 24-26 rejected under 35 U.S.C. 103(a) as being unpatentable over Nissen in view of Gordon.

Nissen discloses the device of claims 1, 6, 7, 16-19, 24 and 25 substantially as claimed, absent the teaching of the device including a flexible material substantially entirely surrounding the periphery of the individual play areas.

Gordon teaches providing a device wherein the play area of the device includes a flexible material completely surrounding said play area.

Given the above teaching the examiner notes that it would have been obvious to one of ordinary skill in the art to provide an enclosure such as disclosed by Gordon as a means by which to preclude items exiting the play area of Nissen.

In regard to claim 26 Nissen discloses at least two spaced play areas.

Claims 2-4, 8, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nissen in view of Gordon and further in view of Laseman et al.

Nissen in view of Gordon disclose the device substantially as claimed in claim 8 absent the teaching of his device including cross members interconnecting his frame members and allowing movement of the frame in relation to a second frame.

As to the device including coupling members the examiner notes that it is well known in the art and that it would have been obvious to one of ordinary skill in art to provide coupling members between the frame (12) of Nissen in view of Gordon for the purpose of securely the attaching the frame members.

As to the device including padding the examiner notes that it is well known in the art to include padding on any and all cross members of an exercising device wherein it is desirable to shield a user against undue hard contact with rigid portions of a device.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 3764

Any inquiry concerning this communication should be directed to Jerome  
Donnelly at telephone number (571) 272-4975.

Jerome Donnelly

JEROME DONNELLY  
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read "JEROME DONNELLY".